

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13987, of Arnold Schlein, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance to permit a subdivision of one lot into two improved lots not meeting the lot occupancy requirements and the closed court area and width requirements (Sub-section 1302.2) in an R-5-B District at premises 1771, 1771½, 1773 and 1773½ Swann Street, N.W., (Square 152, Lot 856).

HEARING DATE: July 13, 1983  
DECISION DATE: September 7, 1983

FINDINGS OF FACT:

1. The subject site is located on the north side of Swann Street between 18th and 17th Streets, N.W. and is known as premises 1771, 1771½, and 1773, 1773½ Swann Street, N.W. It is in an R-5-B District.
2. The site is rectangular in shape with 29.66 feet of frontage on Swann Street and 29.66 feet in width at the rear facing a ten foot wide public alley.
3. The subject lot is improved with a four unit apartment house that is divided down the middle with a party wall. The two ground floor units have walk out access to an interior court yard. The two second floor units use rear common stairway as access to the rear yard. From the front and rear, the subject premises looks like two row houses.
4. The applicant proposes to subdivide the site into two lots to create two flats. In 1955, the prior owner of the subject property combined two lots, 180 and 181 into the subject lot 856.
5. The applicant will not alter the physical characteristics of the existing structure. The variance relief is sought to enable the applicant to sell one half of the premises independent from the other half. The applicant testified that he was unable to get financing if the site was not subdivided. In support thereof the applicant submitted letters to the record from a realtor and a mortgage company.
6. Adjacent to the site on its west side is a vacant lot followed by a restaurant and offices in the C-2-A District. North, east and south of the site are row

existing court yard is approximately nine feet by twenty-four feet in dimension and serves the tenants of the building by providing passive recreation, view, natural light and ventilation. With the subdivision of the property, no structural changes are proposed that would encroach on the existing court yard. The Zoning Administrator has determined that both flats if subdivided would be required to provide a closed court width and area of fifteen feet and 350 square feet, respectively. Each flat provides a court width of 4.5 feet and an area of 108 square feet. The Board finds that the combined court size as it has existed for the last fifteen years will not create an unhealthy living environment provided that the space is kept unobstructed for the life of the building in its present configuration. The Board also finds that the variance request will not create adverse impacts on neighboring properties, but rather provide the amenity of continued contact with the outside. The low height of the structures allows the court yard to receive direct sun light.

12. The Office of Planning, by report dated June 27, 1983, recommended that the application be approved conditionally. The Office of Planning was of the opinion that the subdivision of this property from one lot into two to create two flats would not be objectionable to the neighboring properties. The proposal will not alter the use or physical improvements of the property. The Office of Planning recommended as a condition of approval in this case that the applicant impose a perpetual easement guaranteeing that the existing open court remain open and unchanged. This easement would prohibit either lot owner from building on the court area, installing a fence etc. so that the light, air, view and passive recreational benefits derived from the court will not be changed from its present condition. The Office recommended approval of the application, as it was its opinion that the variances requested would not be contrary to Paragraph 8207.11 of the Zoning Regulations. The Board concurs in the Office of Planning recommendation.

13. There was no opposition to the application at the public hearing or on file.

14. A representative of the Dupont Circle Citizens Association and the 1700 block of Swann Street testified at the public hearing that both groups supported the application, provided that the variance relief is granted only to facilitate the separate sale of the proposed two lots and that no greater variance is granted for the lot occupancy and closed court area and width sizes than presently exists. The Board finds that the only issue before it is the subdivision of the property. No new construction is proposed. Any future construction on either of the new lots

would have to comply with the Regulations or would require a variance from this Board.

15. There was no report received from Advisory Neighborhood Commission 1C.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking two area variances, the granting of which requires proof of a practical difficulty upon the owner of property that arises out of some unique or exceptional condition of the property. The Board must also find under Paragraph 8207.11 of the Zoning Regulations that the relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan. The Board, based on Findings No. 10 and 11, concludes that a practical difficulty does exist. The applicant has met the burden of proof. The existing structure looks like two flats. As such, it is typical of other structures in the immediate neighborhood. The site has had a history as two separate lots. There will be no changes in the present configuration of the structures. The Board further concludes that the variance relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. The existing single stairway from the porch at the rear of the structure shall be removed and shall be replaced with two separate stairways, one to serve each separate lot.
2. The applicant shall establish a reciprocal easement providing for the use of the interior court by the occupants of the first floor on both lots for as long as the existing structure remains erected on either resulting lot.

VOTE: 5-0 (Lindsley Williams, Carrie Thornhill, William F. McIntosh, Douglas J. Patton and Charles R. Norris to grant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:   
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: NOV 18 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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